

Rules of Trial Procedure

Rule 12. Defenses and objections--When and how presented--By pleading or motion--Motion for judgment on the pleadings

(A) When presented.

- (1) The time allowed for the presentation of defenses and objections in a motion or responsive pleading shall be computed pursuant to the provisions of Rule 6(C).
- (2) A motion making any of the defenses in section (B) shall be made
 - (a) before pleading if a further pleading is permitted;
 - (b) within twenty [20] days after service of the prior pleading if no responsive pleading is required.
- (3) If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party must assert a defense of lack of jurisdiction over the person, improper or incorrect venue, insufficiency of process, insufficiency of service of process, or that the same action is pending in another state court of this state in a motion within twenty [20] days after service of the prior pleading.

(B) How presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required; except that at the option of the pleader, the following defenses may be made by a motion in accordance with (A):

- (1) Lack of jurisdiction over the subject-matter,
- (2) Lack of jurisdiction over the person,
- (3) Incorrect venue under Trial Rule 75, or any statutory provision. The disposition of this motion shall be consistent with Trial Rule 75.
- (4) Insufficiency of process,
- (5) Insufficiency of service of process,

(6) Failure to state a claim upon which relief can be granted, which shall include failure to name the real party in interest under Rule 17,

(7) Failure to join a party needed for just adjudication under Rule 19,

(8) The same action pending in another state court of this state. ~~A motion making any of these defenses shall be made before pleading if a further pleading is permitted or within twenty [20] days after service of the prior pleading if none is required. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at trial any defense in law or fact to that claim for relief.~~

No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion.

When a motion to dismiss is sustained for failure to state a claim under subdivision (B)(6) of this rule the pleading may be amended once as of right pursuant to Rule 15(A) within ten [10] days after service of notice of the court's order sustaining the motion and thereafter with permission of the court pursuant to such rule.

If, on a motion, asserting the defense number (6), to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56. In such case, all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

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Rule 56. Summary judgment

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(C) Motion and proceedings thereon. The motion and any supporting affidavits shall be served in accordance with the provisions of Rule 5. An adverse party shall have thirty (30)

Proposed Rule Amendment

days after service of the motion to serve a response and any opposing affidavits. The court may conduct a hearing on the motion. However, upon motion of a party made no later than ten (10) days after the filing of an adverse party's response, the court shall conduct a hearing on the motion which shall be held not less than ten (10) days after the time for filing the response. ...